

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAR 18 2008

MOLLY DWYER, ACTING CLERK
U.S. COURT OF APPEALS

JUAN PENUELAS HERNANDEZ;
MARIA CRISTINA GASPAR,

Petitioners,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 07-74079

Agency No. A95-445-113
A95-445-114

MEMORANDUM *

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted March 10, 2008 **

Before: T.G. NELSON, TASHIMA and BYBEE, Circuit Judges.

This is a petition for review of the Board of Immigration Appeals' ("BIA")
order denying as untimely petitioners' motion to reopen removal proceedings.

* This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without
oral argument. *See* Fed. R. App. P. 34(a)(2).

The regulations provide that a motion to reopen must be filed within 90 days of the final administrative order. *See* 8 C.F.R. § 1003.2(c)(2). The BIA did not abuse its discretion in denying petitioners' motion to reopen because the motion to reopen was filed more than eight months after the final administrative order and did not meet a regulatory exception to the 90-day filing requirement. *See* 8 C.F.R. § 1003.2(c)(3); *Rodriguez-Lariz v. INS*, 282 F.3d 1218, 1222 (9th Cir. 2002) (BIA's denial of a motion to reopen is reviewed for abuse of discretion). Accordingly, respondent's unopposed motion for summary disposition in part is granted.

Further, we lack jurisdiction to review the BIA's decision declining to exercise its sua sponte authority to reopen proceedings. *See Ekimian v. INS*, 303 F.3d 1153, 1159 (9th Cir. 2002). Accordingly, respondent's unopposed motion to dismiss in part is granted.

All other pending motions are denied as moot. The temporary stay of removal confirmed by Ninth Circuit General Order 6.4(c) shall continue in effect until issuance of the mandate.

PETITION FOR REVIEW DENIED in part; DISMISSED in part.